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SERVICE DATE – MARCH 13, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724 (Sub-No. 4)

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

Decided: March 7, 2017

AGENCY: Surface Transportation Board.

ACTION: Final Rule; Technical Correction.

SUMMARY: The Surface Transportation Board (STB or Board) is correcting the final rule served on November 30, 2016, by including one additional Standard Transportation Commodity Code (STCC) to the group of 14 previously included in the final rule.

DATES: This rule is effective on March 21, 2017. Initial reporting under the final rule will begin on March 29, 2017.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245-0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On November 30, 2016, the Board adopted a final rule to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office, through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis.<sup>1</sup> Among other things, the final rule adopted requirements for the reporting of cars in fertilizer service, with fertilizer being defined by 14 STCCs that The Fertilizer Institute (TFI) provided in its comments. U.S. Rail Serv. Issues—Performance Data Reporting (November Decision), EP 724 (Sub-No. 4), slip op. at 15 (STB served Nov. 30, 2016); 81 Fed. Reg. 87472 (Dec. 5, 2016). On December 20, 2016, TFI petitioned the Board to reconsider the final rule on the “grounds that the decision will be affected by new evidence that renders it materially incomplete.” (TFI Pet. 1.) TFI asserts that to complete the definition of fertilizer, the Board must add STCC 2871313 to the 14 STCCs that TFI previously provided. (Id.)

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<sup>1</sup> On January 27, 2017, the Board extended the effective date of the final rule to March 21, 2017, and set initial reporting under the final rule to begin on March 29, 2017. See U.S. Rail Serv. Issues—Data Collection, EP 724 (Sub-No. 3) et al., slip op at 2 (STB served Jan. 27, 2017); 82 Fed. Reg. 9,529 (Feb. 7, 2017) (corrected at 82 Fed. Reg. 11,515 (Feb. 24, 2017)).

On January 9, 2017, the Association of American Railroads (AAR) replied to the petition, stating that “despite the fact that TFI’s submission hardly constitutes new evidence, the AAR does not object” to the additional STCC. (AAR Reply 1, Jan. 9, 2017.) The Board received no other replies.

The Board will make the technical correction that TFI requests.<sup>2</sup> In the November Decision, the Board adopted TFI’s proposal to define fertilizer, for reporting purposes, as 14 fertilizer STCC codes intended to represent the most commonly used codes for fertilizer shipments. See November Decision, slip op. at 15; TFI Reply 4, June 28, 2016. To ensure that the primary fertilizer STCC codes are included in the initial implementation of the reporting rules, the Board will add the additional fertilizer STCC that TFI now proposes.

The Board will make this correction without additional notice and public comment. As noted, this technical correction to the fertilizer STCCs in 49 C.F.R. pt. 1250 is not contested. The correction is also non-substantive in that it merely corrects the fertilizer STCC list to include all of the relevant codes in accordance with the Board’s decision to require certain reporting on fertilizer traffic. See November Decision, EP 724 (Sub-No. 4), slip op. at 15. Accordingly, for good cause shown, the Board finds that notice and public comment on this correction is unnecessary. See 5 U.S.C. § 553(b)(3)(B).

The change to the final rule is set forth in the Appendix to this decision. The only correction to the final rule served on November 30, 2016, is the addition of STCC 2871313 to 49 C.F.R. § 1250.2(a)(6). The Board certifies that there is no change to its Regulatory Flexibility or Paperwork Reduction Act analyses in the November Decision, EP 724 (Sub-No. 4), slip op. at 24-25.

#### List of Subjects

49 C.F.R. Part 1250

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements

#### It is ordered:

1. The Board will grant the unopposed request for a technical correction of the final rule.
2. The final rule set forth below is adopted and will be effective on March 21, 2017. The initial reporting date will be March 29, 2017. Notice of the rule adopted here will be published in the Federal Register.

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<sup>2</sup> Although TFI filed its request as a petition for reconsideration, the Board will treat it as a request for a technical correction to the final rule.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

By the Board, Board Members Begeman, Elliott, and Miller.

## **APPENDIX**

For the reasons set forth in the preamble, title 49, chapter X, subchapter D, part 1250 of the Code of Federal Regulations is corrected as follows:

### **PART 1250 – Railroad Performance Data Reporting**

1. The authority citation for part 1250 continues to read as follows:

Authority: 49 U.S.C. §§ 1321 and 11145.

2. In 1250.2, paragraph (a)(6) is revised to read as follows:

#### **§ 1250.2 Railroad Performance Data Elements**

(a) \* \* \*

(6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer (the following Standard Transportation Commodity Codes (STCCs): 2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, 2871313, and 2871451), and all other). In order to derive the averages for the reporting period, carriers should run a same-time snapshot each day of the reporting period, capturing cars that have not moved in 48 hours or more. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting period. In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (e.g., ballast).

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